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Federal Communications Commission

DA 94-48

Before the
Federal Communications Commission
FEB Washington, D.C. 20554

DIS MM Docket No 93-33

In the Matter of

Amendment of Section 73.202(b). RM-8160
Table of Allotments, RM-8233
FM Broadcast Stations.
(Oakhurst, Firebaugh and June Lake,
California)¹

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: January 11, 1994; Released: February 7, 1994

Comment Date: March 31, 1994

Reply Comment Date: April 15, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is the request of Don Stewart ("petitioner") seeking the allotment of a Class A FM channel to June Lake, California, as its first local aural service. Petitioner filed its request as a counterproposal to the *Notice of Proposed Rule Making*, 8 FCC Rcd 1544 (1993), which proposed the substitution of Channel 276A for Channel 296A at Oakhurst, California, and modification of the license for Station KAAT(FM), as well as the substitution of Channel 234A for Channel 276A at Firebaugh, California, to accommodate the Oakhurst modification, as requested by California Sierra Corporation.^{2 3} As stated in a separate *First Report and Order* in this proceeding, 9 FCC Rcd (adopted January, 1994), we have determined that Channel 226A can be allotted to June Lake⁴ in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. However, as June Lake is not listed in the U.S.

Census, and is not incorporated, we declined to allot the channel in the absence of further demographic information.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. *See, e.g., Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Hannibal, Ohio*, 5 FCC Rcd 3315 (1990); and *Statenville, Georgia*, 5 FCC Rcd 2685 (1990). June Lake is not listed in the U.S. Census.⁵ Therefore, petitioner is requested to submit information regarding June Lake to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or governmental units that identify themselves specifically with that locality.⁶

3. A staff review has determined that Channel 226A can be allotted to June Lake without the imposition of a site restriction at coordinates 37-47-06 and 119-04-06.

4. We believe the public interest may be served by seeking further information regarding the status of June Lake as a community for allotment purposes since the proposal could provide a first local aural service to that locality. However, this *Further Notice* does not afford additional opportunity to file counterproposals since such an opportunity was provided in response to the *Notice*. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to June Lake, California, as follows:

	Channel No.
City	Present Proposed
June Lake, California	-- 226A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix

¹ June Lake has been added to the caption.

² Although petitioner's request was signed, he failed to include an affidavit verifying that the statements contained in the petition are accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in his comments.

³ Additionally, Stewart did not state an intention to apply for a Class A channel, if allotted to June Lake, and should correct the omission in his comments. Stewart merely stated his "interest" in applying for a new FM station at June Lake. However, the

proponent of an allotment proposal, to be considered *bona fide* must state a clear intention to apply for the channel, as well as a willingness to construct a station. *See, Lopez and Dushore, Pennsylvania*, 7 FCC Rcd 854 (1992).

⁴ In view of the discrepancies noted above, we wish to clarify that had another channel not been available for consideration at June Lake, Stewart's proposal would have been rejected as counterproposals must be technically and procedurally correct at the time of their filing. *See Fort Bragg, California*, 6 FCC Rcd 5817 (1991).

⁵ We do note that June Lake is listed in the 1993 Rand McNally Commercial Atlas and Marketing Guide ("Atlas") with a population of 900 (summer population is listed as 2,500). However, mere geographic location is not sufficient to establish community status. *See, Vimville, Mississippi*, 48 FR 5974 (1983).

⁶ The Atlas also indicates that June Lake has a post office and its own zip code. However, those attributes alone are not sufficient to establish community status. *See Coker, Alabama*, 43 RR 2d 190 (1978).

and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 31, 1994, and reply comments on or before April 15, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Don Stewart
12550 Brookhurst Street - #A
Garden Grove, CA 92640

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.